

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT J. VITI and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Brooklyn, NY

*Docket No. 00-2470; Submitted on the Record;
Issued June 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has a ratable hearing loss causally related to noise exposure in his federal employment.

The Board has duly reviewed the case record and concludes that this case is not in posture for decision.

On February 22, 1999 appellant, then a 49-year-old supervisory criminal investigator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a hearing loss due to his exposure to firearms, jet engine noise and other vehicle noise during his federal employment. In a statement submitted with the claim, appellant noted that he was required to qualify every six months and expected to practice on his own to achieve and sustain firearms proficiency. He also noted that he was exposed to excessive noise, in the cell blocks. By decision dated May 24, 2000, the Office of Workers' Compensation Programs found that appellant's hearing loss was not severe enough to be considered ratable.

The schedule award provision of the Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. In addition to this standard, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in

¹ 5 U.S.C. § 8101.

² 20 C.F.R. § 10.404 (1999).

evaluating hearing loss. The requirements, as set forth in the Office's procedure manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.³ The Office further advises that a certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the test were conducted met the accreditation standards of the Professional Services Board of the ASHA (ANSI S3.6 (1969) and S.1 (1977)), respectively. The calibration standards require daily, monthly, quarterly and annual testing.⁴

The Office processed the claim based upon the June 22, 1999 audiogram by Dr. Charles P. Kimmelman, a Board-certified otolaryngologist. The Board concludes, however, that the June 22, 1999 audiometric test was not a proper basis for computation of appellant's hearing loss. The Office sent Dr. Kimmelman a list of questions with regard to his testing, including, *inter alia*, questions regarding the causation of the hearing loss and questions regarding the verification of audiometric testing. An internal Office note dated September 7, 1999 indicates that the Office attempted to get Dr. Kimmelman to complete his report, but was unable to reach him. A September 20, 1999 Office "explanation of need for clarification" stated that the Office could not use Dr. Kimmelman's audiogram because it was not signed and because it recommended a magnetic resonance imaging of the temporal bones. The note indicated that, if Dr. Kimmelman did not provide a signed audiogram within one week, another audiogram with a different otolaryngologist should be requested. Therefore, by letter dated January 11, 2000, the Office referred appellant to Dr. Stephen Finger, also a Board-certified otolaryngologist, for audiometric and otolaryngologic examination.

On May 1, 2000 the Office received Dr. Finger's medical report, which was dated January 26, 2000. Although Dr. Finger indicated that the audiometric evaluation revealed normal hearing in the right ear and a mild hearing loss in the left ear, he failed to send a copy of the audiogram.

The Board finds that the Office began to factually and medically develop appellant's hearing loss claim, but did not complete such development in accordance with its own

³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.08 (September 1996).

⁴ *Id.*

procedures and Board precedent.⁵ The Board specifically notes that the June 22, 1999 audiogram, upon which it based its opinion, is not signed, nor is calibration information provided.

On remand, the Office shall further develop the evidence as necessary by ensuring that the testing conducted to assess the scope and degree of appellant's hearing loss adheres to the requirements contained in the Federal (FECA) Procedure Manual consistent with Board precedent and for issuance of a *de novo* decision on whether appellant's hearing loss is causally related to factors of his federal employment. The *de novo* decision should address appellant's entitlement, if any, to a schedule award.

The decision of the Office of Workers' Compensation Programs dated May 24, 2000 is hereby set aside and the case is remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC
June 12, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *Raymond H. VanNett*, 44 ECAB 480 (1993).